IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR.

ORDER.

Sudhanshu Rai vs. The University of Rajasthan Jaipur & anr.

S.B. Civil Writ Petition No.638/2005 under Article 226 of the Constitution of India.

Date of Order: April 6, 2005.

PRESENT
HON'BLE MR. PRAKASH TATIA, J.

Mr. M.C. Bhoot, for the petitioner.
Mr. J.P. Joshi for the respondents.

BY THE COURT:

Heard learned counsel for the parties.

Brief facts of the case are that the petitioner is student of B.E. (Computer Science & Engineering) , Engineering College, Bikaner , affiliated to the University of Rajasthan, Jaipur. The petitioner appeared in the IInd B.E. (IVth Semester) Computer Main Examination, 2002 where he could not obtained 40% marks in aggregate in four subjects, therefore, the petitioner was given supplementary in those four subjects. The petitioner appeared in the supplementary examination in the year 2002 where he was declared passed in three papers out of four papers. In one paper, i.e. Telecom Engineering

Fundamentals , the petitioner was again allowed to appear in the supplementary examination as it was permissible under the Rules. The petitioner appeared in the examination for the above said one paper for which examinations were held in the year 2004. At this time, the petitioner obtained 40% marks in aggregate but he has been declared as failed on the ground that the petitioner obtained only 16 marks in "final" whereas minimum pass marks in "final" are 21. According to the petitioner, as per note (1) of the marks-sheet issued to the petitioner "Ex.3", the petitioner was required to obtained 30% marks in final examination but that has no application to the case of the petitioner because of the reason that when the petitioner appeared in the main examination of the 4th semester', he was only required to obtained 40% marks in aggregate and there was no need to obtain minimum marks separately as contained in Ex.1. According to the petitioner, when there was no condition of obtaining the minimum marks separately in theory papers in main examination, there cannot be different criteria for passing the paper in supplementary examination. According to the petitioner, the supplementary examination cannot be treated separately and there cannot be different rules for main examination and supplementary examination. It is also submitted that even if there is any change in policy in this regard then also that policy cannot be made applicable retrospectively. The learned counsel for the petitioner relied

upon the Full Bench judgment delivered in the case of Virendra Kapur v. University of Jodhpur and others (AIR 1964 Raj. 161) wherein the Full Bench of this Court held that candidate taking his examination on faith of certain regulations in force at time of examination then the University has no power to alter or substitute regulation with retrospective effect to candidate's disadvantage and the candidate is entitled to benefit under old regulation. The Full Bench also declared that even if he took supplementary examination under new regulation, it cannot disentitle the student to such benefit as the plea of estoppel is not available against the statute.

The learned counsel for the petitioner also submitted that even if the decision taken by the academic council is read, it will make clear that by this resolution, it has been provided that a student is required to (1) secure at least 30% marks in theory and (2) 30% marks in practicals/ sessionals separately. According to the learned counsel for the petitioner, the University itself has grouped the subjects having two categories, one is of theory papers which have been shown in the marks-sheet issued to the petitioner on earlier occasions (Ex.1) for the same subjects of same semester and second is practicals and sessionals. Therefore, the requirement for student is to secure 30% marks in theory without there being any bifurcation of marks shown in the heading

"sessionals" and in the heading shown as "practicals". It appears word "practicals" used in the mark-sheet is a mis-description and should have been main examination or written paper etc. It is also submitted that in fact the theory papers do not have any practical examinations and in fact, the theory papers have two sets of marks, one is of internal assessment and another is main written examination for theory subject. According to the learned counsel for the petitioner, the student even after coming into force of the resolution of the academic council dated 13.8.2003, is required to be declared passed on his securing total 30% marks by aggregating the marks obtained in sessionals as well as in the main examination. Therefore, according to the learned counsel for the petitioner, since the petitioner secured total 41 marks in the examination conducted in the year 2004, therefore, the University should have declared the petitioner as pass in the subject.

The learned counsel for the respondent-University vehemently submitted that it is not a case of retrospective application of resolution dated 13.8.2003 because of the simple reason that the decision has been made applicable to the examination which were held after coming into force the resolution dated 13.8.2003. According to the learned counsel for the respondent-University, as per sub-clause (iv) of the Resolution No.14 dated 13.8.2003, a student is required to secure at least 30%

marks in theory and 30% marks in practicals or sessionals separately and since the petitioner obtained less than 30% marks in the final (written) examination, therefore, he was rightly declared failed.

I considered the submissions of the learned counsel for the parties and perused the record.

It is clear from the facts as mentioned above and from Ex.1 that there are two sets of the examination for the relevant course, one consists of the theory paper and another consists of practicals and sessionals. There are six theory papers whereas there are five practicals. In the main examination there was no provision requiring the student to secure minimum marks for sessionals and in theory paper.

Now the respondent-University has taken a stand that in view of clause (iv) of Resolution 14 dated 13.8.2003, a student is required to secure at least 30% marks in theory examination and according to the stand of the University, the student is required to secure 30% marks each in sessional as well as in written paper. Contrary to it, according to the learned counsel for the petitioner, even clause (iv) of Resolution 14 nowhere provides that a student is required to secure 30% marks in sessional and in theory paper. It is submitted that requirement of 30%

marks is aggregate marks in any theory paper. It is also submitted that so far as practicals and sessionals are concerned, clause (iv) of Resolution 14 certainly provides that student is required to secure 30% marks separately for practicals and for sessionals. The student is required to secure 40% marks together in all the papers for promotion to the higher class and the petitioner secured more than 40% marks in aggregate, is not in dispute. The petitioner has been declared failed because of not securing 30% marks in written test which has been described as "final" in marks-sheet Ex.3. According to the learned counsel for the petitioner, firstly clause (iv) itself nowhere requires for securing 30% marks for sessionals and for final (or written test) and if clause (iv) is read as suggested by the University, then this is a decision taken by the University during pursuing the petitioner study for the subject and it puts the petitioner in disadvantageous position, therefore, clause (iv) of Resolution 14 cannot be invoked in the case of the petitioner.

The Full Bench of this Court had some what identical facts when the case of Virendra Kapur(supra) was decided by the Full Bench. The relevant facts of the case of Virendra Kapur are as under:-

> "The petitioner, a student of the Engineering College of the University of Jodhpur appeared in April,1963 at the second year B.E. examination of the University and secured over 55 per cent marks in the aggregate but failed

> in one of the theory papers viz. Mathematic II. According to Regulation 88 and other connected regulations adopted by the Vice-Chancellor in 1962 the petitioner was permitted to keep terms in the third year Engineering Class in 1963 and he was also entitled to appear in the paper in which he had failed alongwith the third year examination and was to be given a pass class after he had passed the examination in which he failed. A notification dated 12.6.1963 issued under the authority of the Vice-Chancellor however provided that in the case of students of I, II, III or IV B.E. Examinations who had passed in all practicals but had failed in one or more theory papers regardless of their aggregate marks or those who had passed in all theory papers but had failed to secured the minimum passed marks of 45 per cent in the aggregate, a supplementary examination was to be held in the month of August subject to certain conditions which were set forth in the notification and meanwhile they would be permitted to keep terms in the next higher class and entitled to study in that class and take the examination therefor if they pass in the supplementary examination. But it was also directed by this notification that such of the candidates who failed in the supplementary examination or did not appear at it must join as repeaters in the class in which they had failed and should attain all class as regular students although they were to be exempted from attending the practical class. The petitioner appeared at the supplementary examination held in August, 1963 but having failed again in Mathematic II he was asked to join as a repeater in the second year class in accordance with the new regulation of the Vice-Chancellor. The petitioner then filed a writ petition under Art.226 challenging the action taken by the University on various grounds."

In the above fact situation, the full bench held as under:

> "(1) on a comparison of the old and the new regulations that while the new regulations gave certain additional concessions to students, it also imposed some disadvantages or disabilities and therefore the two

regulations could not operate satisfactorily on an identical field simultaneously without producing an irreconcilable conflict.

(ii) that the petitioner having joined the University or taken an examination on the faith of a certain state of thinks the University as a statutory body was and would be under a duty to act upto that faith and if it commits a breach of that faith, then the aggrieved party would have a legitimate cause of grievance calling for redress.

(iii) that the petitioner having had the benefit of the old regulation 38 had acquired a valuable right or a privilege to be governed by the same, and that right or privilege could not be interfered with by a subsequent notification to his disadvantage, which disadvantage certainly consists in his being asked to revert to the Second Year B.E. and take the entire written examination over again which he would not be required to do under the old regulation.

(iv) that even accepting that the old regulation 38 stands by necessary implication repealed and replaced by the new regulation the latter should be given a prospective effect only. The language of the new regulation did not show that it is expressly or by necessary intendment retrospective in its operation in the sense that it deprives a candidate of the benefit of the old regulation 38 which he had doubtless acquired it being already in force in the case of the petitioner when he had taken his annual examination for the second year B.E. in April, 1963. Besides, a sub-delegate like the Vice-Chancellery was hardly competent in law to give a retrospective operation to any regulation made by him within the scope of his legitimate authority. Therefore, the proper way to give effect to both the regulations properly and harmoniously would be to see, first, whether a candidate is entitled to the benefit of old regulation no.38 and the cognate ones and if so, such benefit must be given to him; but where he is not so entitled then effect should certainly be given to the new regulation.

(v) that the regulation passed by the Vice-Chancellor was in the nature of a bye-law passed by a delegate and since it operated unreasonably on a certain class of persons to whom it need not and should not apply, the High Court

> would be justified in law in holding that it shall not so applied. Therefore, the petitioner was entitled to be governed by the old regulation 38 and not the new one.
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> (vi) that as the petitioner was entitled, to be governed by the old regulation and to have the benefit of it the merit factor that he had taken the supplementary examination as the result of a new regulation cannot be legitimately held to disentitle him to the benefit of the former. The reason is that there cannot be any estoppel against the statue. (emphasis supplied)"

In view of the reasons given in the Full Bench decision referred above, it is clear that the petitioner, who appeared in the examination of the subject in question, would have been declared passed if he would have secured the 30% marks in the paper not individually in sessional and main written examination and now a condition has been sought to be imposed by taking help of clause (iv) of Resulution No.14 dated 13.8.2003, that restriction cannot be applied to the facts of the case of the petitioner as by this, only the petitioner will be in disadvantageous position and in fact, has been put to such a disadvantageous position so as to declare him failed in the subject.

In view of the above reasons, the writ petition of the petitioner is allowed and it is held that the petitioner shall be entitled to have his result declared by following the procedure which was applicable to the case of the petitioner as adopted while declaring the result of main examination of the paper-Telecom Engineering Fundamentals. The

respondent-University is directed to cancel the marks-sheet Ex.3 and issue correct marks-sheet declaring the petitioner as passed because of the fact that there is no dispute that in case the petitioner's result is assessed as per the procedure prevailing before the Resolution No.14 dated 13.8.2005, the petitioner can be declared pass in the said paper. No order as to cost.

(PRAKASH TATIA),J.

mlt.